

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Elimination of Rate-of-Return Regulation of	)	RM-10822
Incumbent Local Exchange Carriers	)	
	)	
Federal-State Joint Board on Universal	)	CC Docket No. 96-45
Service	)	

**Reply Comments of  
The Nebraska Rural Independent Companies**

**I. Introduction**

The Nebraska Rural Independent Companies<sup>1</sup> (the “Nebraska Companies”) hereby submit reply comments in the above captioned proceeding. The Nebraska Companies appreciate the opportunity to reply to comments in this matter filed in response to comments on the petition for rulemaking to eliminate rate-of-return (“ROR”) regulation of incumbent local exchange carriers (“ILECs”) submitted by Western Wireless Corporation.<sup>2</sup>

The Western Wireless Petition asks the Federal Communications Commission (“Commission”) to base federal universal service support on a forward-looking cost

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<sup>1</sup> Companies submitting these collective comments include: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telcom, Inc., Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., Hooper Telephone Company, K&M Telephone Company, Inc., NebCom, Inc., Nebraska Central Telephone Company, Northeast Nebraska Telephone Co., Pierce Telephone Co., Rock County Telephone Company, Stanton Telephone Co., Inc. and Three River Telco.

<sup>2</sup> See *Elimination of Rate-of-Return Regulation of Incumbent Local Exchange Carriers*, RM-10822 and *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Petition for Rulemaking to Eliminate Rate-of-Return Regulation of Incumbent Local Exchange Carriers, Western Wireless Corporation (“*Western Wireless Petition*”) (filed Oct. 30, 2003).

methodology.<sup>3</sup> The Western Wireless Petition also requests that the Commission set rural local exchange carrier (“LEC”) access rates using a method other than ROR, such as price cap mechanisms or generic intercarrier compensation rules.<sup>4</sup>

The Nebraska Companies believe that some of the arguments made in comments supporting the Western Wireless Petition misrepresent the facts. Therefore, the Nebraska Companies address their reply comments to such arguments in order to give the Commission a more balanced and factual framework in which to render a decision on the merits of the Western Wireless Petition. As stated in their comments, the Nebraska Companies recommend that the Commission dismiss the Western Wireless Petition for rulemaking.

**II. Innuendo, and not Facts, is the Only Information that has been Supplied to Support the Charge that the Growth of the High-Cost Universal Service Support is Due to the Computation of Such Support on an Embedded-Cost Basis.**

Western Wireless suggested in its Petition that “. . . ROR regulation is the true cause for the growth of the high-cost universal service fund. . . .”<sup>5</sup> This sentiment is shared by the Ad Hoc Telecommunications Users Committee (“Ad Hoc”), which states that “[a]lthough Ad Hoc does not know the extent to which each of several factors may have contributed to the large, unexpected growth in high cost support, it is reasonable to conclude that the embedded cost standard is the main problem.”<sup>6</sup> The reasons advanced

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<sup>3</sup> Id. at p. ii.

<sup>4</sup> Ibid.

<sup>5</sup> Id. at p. 5.

<sup>6</sup> See *Elimination of Rate-of-Return Regulation of Incumbent Local Exchange Carriers*, RM-10822 and *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of the Ad Hoc Telecommunications Users Committee (“*Ad Hoc Comments*”) (filed Jan. 16, 2004) at p. 2.

for this statement by Ad Hoc are not based on facts and are in some cases are a clear misstatement of the facts, as discussed in greater detail below.

Ad Hoc asserts that since the Commission's adoption and implementation of the Rural Task Force ("RTF") recommendation for universal service support for rural carriers, high cost support for rural local exchange carriers ("RLECs") has increased from about \$1.73 billion in 2001 to almost \$2.75 billion for 2004.<sup>7</sup> Ad Hoc did not present an explanation of the methodology it used to produce these numbers, other than to note that it used "Quarterly Administrative Filings to the FCC, 2001-2004" filed by the Universal Service Administrative Company ("USAC").<sup>8</sup> The Nebraska Companies note that it appears as if the high cost support that Ad Hoc attributes to RLECs is likely the entire amount of support that is projected to be paid for universal service programs that support rural ILECs, including the amount of support that is paid to competitive eligible telecommunications carriers ("CETCs"). For example, the amounts that are paid to rural ILECs and CETCs under each high-cost rural support mechanism (high cost loop, local switching support, and long term support) and interstate common line support are listed individually in quarterly reports issued by USAC.<sup>9</sup> By the Nebraska Companies calculation, about 11 percent, or about \$295 million of support of the total support that Ad Hoc claims is to be paid to RLECs in 2004 is actually earmarked for CETCs operating in areas served by RLECs. This amount compares to only about \$5.4 million in support that was paid to CETCs operating in RLECs' areas in 2001. Therefore,

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<sup>7</sup> Id. at p. 4.

<sup>8</sup> Id. at p. 14.

<sup>9</sup> See, for example, Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter 2004 ("*USAC Fund Size Report*") (issued Oct. 31, 2003) at pp. 9-13.

approximately 29 percent, or about \$290 million of the growth in the high cost funds that are paid to support companies serving rural areas was paid to CETCs, not RLECs.

An even more significant factor that contributed to the growth of high cost funds paid to support RLECs from 2001 to 2004 was the institution of the interstate common line support mechanism ("ICLS"). In the *MAG Order* released on November 8, 2001, the Commission modified the interstate access charge and universal service support systems for ROR carriers.<sup>10</sup> The Commission created the ICLS mechanism as a new universal service support mechanism to replace revenues received from the carrier common line ("CCL") access charge rate element, which was phased out.<sup>11</sup> The projected amount of ICLS support that will be paid to RLECs in 2004 is about \$406 million.<sup>12</sup> Therefore, about 40 percent of the growth in the high cost support funds paid to RLECs is

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<sup>10</sup> See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, and *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, FCC 01-304 ("*MAG Order*") (rel. Nov. 8, 2001).

<sup>11</sup> Western Wireless suggested in its Petition that ICLS is a perpetuation of the ROR system. See *Western Wireless Petition* at p. 12. However, the Nebraska Companies note that the Commission also instituted a support mechanism for price-cap companies known as Interstate Access Support ("IAS") when the Commission modified interstate access rates for such companies. See *Access Charge Reform*, CC Docket No. 96-262, *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, *Low-Volume Long Distance Users*, CC Docket No. 99-249, and *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, and Eleventh Report and Order in CC Docket No. 96-45, FCC 00-193 (rel. May 31, 2000). Therefore, the Nebraska Companies do not believe that Western Wireless' assertion that ICLS is a perpetuation of ROR regulation is a valid statement.

<sup>12</sup> See *USAC Fund Size Report* at p. 13. The amount of ICLS for incumbent rate of return carriers is projected to be \$101,438 for the first quarter of 2004. Annualizing this figure produces a total estimated amount of \$406 million. The estimated annual amount of ICLS that will be paid to CETCs in 2004 is \$54 million. That amount was included in the total amount of high cost support paid to CETCs serving RLECs' areas discussed in the previous paragraph.

attributable to a new mechanism established to replace revenues received from access charges.

Ad Hoc notes that in adopting the RTF, the Commission estimated an aggregate impact of \$1.29 billion additional support paid over the five-year term of the *RTF Order*.<sup>13</sup> Ad Hoc suggests that the growth in universal service support funds paid to rural carriers will be far greater than this estimate.<sup>14</sup> However, Ad Hoc does not recognize that the estimate was only made for rural ILECs, and did not include the impact of the ICLS mechanism, as that mechanism was ordered after the *RTF Order* was adopted. Contrary to Ad Hoc's description, it appears that the aggregate impact estimated by the Commission of the RTF Order (less support for CETCs and ICLS) is reasonably close to the demand for increased support funds that is actually occurring. Therefore, the increase in rural universal service support funds distributed does not indicate the growth in such funds has been fueled by ROR regulation.

In arguing that the use of ROR regulation has led to substantial growth of universal service support funds for rural companies,<sup>15</sup> the parties have ignored a mechanism instituted by the Commission in the RTF order to restrain the growth of such support funds, namely, the Rural Growth Factor ("RGF").<sup>16</sup> The RGF is computed as the

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<sup>13</sup> See *Ad Hoc Comments* at p. 4. The Nebraska Companies note that the correct number is \$1.26 billion, not \$1.29 billion. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, and *Multi-Association Group (MAG) Plan for Regulation of Interstate Service of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, FCC 01-157 ("*RTF Order*") (rel. May 23, 2001) at para. 28.

<sup>14</sup> See *Ad Hoc Comments* at pp. 4-5.

<sup>15</sup> See generally *Western Wireless Petition* and *Ad Hoc Comments*.

<sup>16</sup> See *RTF Order* at para. 40.

sum of the annual percentage in the United States Department of Commerce's Gross Domestic Product-Chained Price Index ("GDP-PI") plus the percentage change in the total number of rural incumbent local exchange carrier working loops during the calendar year preceding the July 31<sup>st</sup> filing submitted pursuant to Section 36.611 of the Commission's rules.<sup>17</sup> The annual growth in high cost loop support cannot exceed the RGF. Therefore, the growth in high cost loop support, which comprises about 44 percent of all universal service support funds paid to rural carriers, is constrained to be no greater than the sum of the rate of access line growth plus the rate of inflation. This mechanism serves to limit substantial growth of high cost support funds to rural ILECs. However, the mechanism is not applied as a cap to the overall amount of high cost loop support funds that are paid to CETCs.<sup>18</sup> Such support payments are not capped under the current rules, and, as discussed previously, clearly represent a major source of the increased payment of universal service support funds.

Finally, Ad Hoc suggests some of the growth in rural high cost universal service support may be due to RLEC investments that are not properly made under universal service rules.<sup>19</sup> Specifically, Ad Hoc states that RLECs may not include the cost of building broadband capable plant in their allowable costs for universal service support.<sup>20</sup> This is clearly a misstatement of the rules for high cost universal service support for rural companies. The Commission indicated in the *RTF Order* that "[c]ontrary to the arguments of some commenters, *use of support to invest in infrastructure capable of*

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<sup>17</sup> See 47 C.F.R. § 36.604.

<sup>18</sup> See 47 C.F.R. § 36.603.

<sup>19</sup> See *Ad Hoc Comments* at p. 8.

<sup>20</sup> *Ibid.*

*providing access to advanced services does not violate section 254(e). . . .*<sup>21</sup> (emphasis added) The Commission further elaborated that “. . . although the high-cost loop support mechanism does not support the provision of advanced services, *our policies do not impede the deployment of modern plant capable of providing access to advanced services.*”<sup>22</sup> (emphasis added) These statements indicate that the use of high cost universal service support by rural carriers to invest and maintain a network that is capable of providing access to advanced services is allowed under the rules.

**III. The Issues Raised by the Western Wireless Petition are being Addressed in Other Open Proceedings; Therefore, Opening Another Rulemaking is Unnecessary and Wasteful.**

Ad Hoc and Nextel Communications, Inc. (“Nextel”) suggest that it is necessary for the Commission to open a proceeding, as the issues raised by the Western Wireless Petition are not addressed in other open proceedings. Ad Hoc indicates that a proceeding is necessary to consider general issues related to excessive fund growth and competitive entry.<sup>23</sup> Nextel states that the main issue in the Western Wireless Petition, the “rural embedded cost entitlement,” is not under consideration in any pending proceeding.<sup>24</sup> As the Nebraska Companies discuss following, the Commission is currently addressing issues raised by the Western Wireless Petition, and the opening of another proceeding is unnecessary. In addition, it would be inappropriate to open two proceedings to address the same issue.

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<sup>21</sup> *RTF Order* at para. 200.

<sup>22</sup> *Ibid.*

<sup>23</sup> *See Ad Hoc Comments* at p. 10.

<sup>24</sup> *See Elimination of Rate-of-Return Regulation of Incumbent Local Exchange Carriers*, RM-10822 and *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of the Nextel Communications, Inc. (“*Nextel Comments*”) (filed Jan. 16, 2004) at footnote 10.

The Commission has referred to the Federal-State Joint Board on Universal Service (“Joint Board”) the issues of fund growth and the effect of competitive entry. The Joint Board has received comments and reply comments on these issues. In gathering information on these issues the Joint Board stated:

We seek to establish a complete record on the development of competition in high-cost areas, the effect of the Commission’s current policies on such development, and how line growth in high-cost areas may impact the universal service fund. To the extent possible, we request that commenters provide detailed data on competition and line growth in high-cost areas.<sup>25</sup>

Thus, the issues raised by Ad Hoc are being addressed in an open proceeding. The Nebraska Companies believe that information gathered by the Joint Board should be carefully considered by the Commission before taking further action on these issues, including the opening of another proceeding. The Joint Board is expected to make a recommendation to the Commission in February 2004 regarding the issues discussed above, as well as on other issues that were referred to it.<sup>26</sup> Therefore, the opening of another proceeding to address these issues is unnecessary at this time.

The Nebraska Companies believe that Nextel is attempting to confuse the issue by stating that the “rural embedded cost entitlement” is not under consideration in any pending proceeding.<sup>27</sup> The embedded cost methodology is currently used to determine universal service support amounts and interstate access charges for many rural carriers. As the Nebraska Companies noted in their comments, the Commission has referred to the Joint Board the issue of the amount of universal service support that should be paid to

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<sup>25</sup> See *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission’s Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, CC Docket No. 96-45, FCC 03J-1 (rel. Feb. 7, 2003) at para. 9.

<sup>26</sup> See Washington Watch, January 12, 2004, available at: [http://www.neca.org/source/neca\\_\\_160\\_\\_1161.asp](http://www.neca.org/source/neca__160__1161.asp).

<sup>27</sup> *Nextel Comments* at footnote 10.



eligible telecommunications carriers (“ETCs”) in study areas in which a CETC is operating and seeking federal universal service support.<sup>28</sup> Thus, the Joint Board is currently addressing the issue of the methodology used to determine support amounts for rural carriers. Furthermore, as indicated above, the Joint Board is expected to issue a recommendation on this and other issues this month. Therefore, it would be inappropriate to open another proceeding to address the issue of the methodology used to determine universal service support amounts for rural carriers at this time.

The methods used to determine interstate access rates for ROR carriers has been most recently considered in the *MAG Order*. As the Nebraska Companies stated in their comments, in the *MAG Order*, the Commission also opened a Notice of Proposed Rulemaking (“NPRM”) in which it sought comment on alternative regulatory structures to the rules it had just adopted for interstate access charges for ROR carriers.<sup>29</sup> Furthermore, the Commission has on its open meeting agenda for February 12, 2004 an item in which it will consider a Report and Order and Second NPRM regarding the issues on which it sought comment in the first NPRM.<sup>30</sup> Therefore, the Commission is still addressing issues related to possible changes to interstate access charges for ROR carriers, and the opening of another proceeding to address these same issues is unnecessary.

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<sup>28</sup> See *Elimination of Rate-of-Return Regulation of Incumbent Local Exchange Carriers*, RM-10822 and *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of the Nebraska Rural Independent Companies (filed Jan. 16, 2004) at p. 2.

<sup>29</sup> *Id.* at pp. 3-4.

<sup>30</sup> See Federal Communications Commission, Commission Meeting Agenda, *FCC to Hold Open Commission Meeting Thursday, February 12, 2004*, Item No. 4.

#### **IV. Conclusion**

The Nebraska Companies oppose the Western Wireless Petition, and request that the Commission dismiss such petition.

The charges made by some parties that the substantial growth of the universal service rural high cost funds is due to the use of ROR regulation to compute the amount of such support funds are without merit. As demonstrated by the Nebraska Companies, the growth in the payment of rural high cost funds is due largely to the payment of such funds to CETCs, and to the Commission's institution of ICLS, which shifted access cost recovery from CCL into the universal service support mechanism.

Some parties urged the Commission to open an NPRM to address the issues raised in the Western Wireless Petition, because such parties claim that the issues are not currently being addressed. However, as indicated in these reply comments, the Commission is awaiting a recommendation from the Joint Board concerning issues related to the computation of support amounts for carriers in areas served by CETCs. Furthermore, the Commission is opening a Second NPRM related to the computation of access charges for ROR carriers. Therefore, the Commission is currently addressing the issues raised by the Western Wireless Petition, and the opening of another proceeding to address these issues would be unnecessary and redundant.

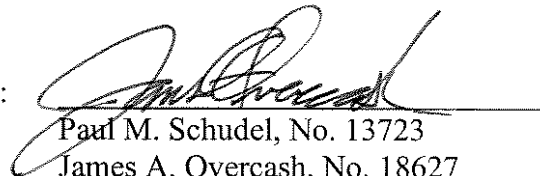
Dated: February 13, 2004.

Respectfully submitted,

The Rural Independent Companies

Arlington Telephone Company  
The Blair Telephone Company,  
Cambridge Telephone Company,  
Clarks Telecommunications Co.,  
Consolidated Telephone Company,  
Consolidated Telco Inc.,  
Consolidated Telcom, Inc.  
Eastern Nebraska Telephone Company,  
Great Plains Communications, Inc.,  
Hartington Telecommunications Co., Inc,  
Hershey Cooperative Telephone Company,  
Inc.,  
Hooper Telephone Company,  
K&M Telephone Company, Inc.,  
Nebcom, Inc.,  
Nebraska Central Telephone Company,  
Northeast Nebraska Telephone Company,  
Pierce Telephone Co.,  
Rock County Telephone Company,  
Stanton Telephone Co., Inc., and  
Three River Telco

By:



Paul M. Schudel, No. 13723

James A. Overcash, No. 18627

WOODS & AITKEN LLP

301 South 13th Street, Suite 500

Lincoln, Nebraska 68508

(402) 437-8500

(402) 437-8558 Facsimile